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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H 2007 187

DAVID V. FAINBLIT
8844 W. Avoca Ct.
Lancaster, California 93536

A C C U S A T I O N

Respiratory Care Practitioner License No. 13298

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California (Board), Department of Consumer Affairs.

2. On or about February 8, 1990, the Board issued Respiratory Care Practitioner License Number 13298 to David V. Fainblit (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2009, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the

1 following laws. All section references are to the Business and Professions Code (Code), unless
2 otherwise indicated.

3 4. Section 3710 of the Code states: “The Respiratory Care Board of
4 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
5 8.3, the Respiratory Care Practice Act].”

6 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
7 and revoke licenses to practice respiratory care as provided in this chapter.”

8 6. Section 3750 of the Code states:

9 “The board may order the denial, suspension or revocation of, or the imposition of
10 probationary conditions upon, a license issued under this chapter, for any of the following
11 causes:

12 “ . . .

13 “(d) Conviction of a crime that substantially relates to the qualifications,
14 functions, or duties of a respiratory care practitioner. The record of conviction or a
15 certified copy thereof shall be conclusive evidence of the conviction.

16 “ . . .

17 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
18 substantially related to the qualifications, functions, or duties of a respiratory care
19 practitioner.

20 “”

21 7. Section 3750.5 of the Code states:

22 “In addition to any other grounds specified in this chapter, the board may deny,
23 suspend, or revoke the license of any applicant or license holder who has done any of the
24 following:

25 “(a) Obtained or possessed in violation of law, or except as directed by a licensed
26 physician and surgeon, dentist, or podiatrist administered to himself or herself, or
27 furnished or administered to another, any controlled substances as defined in Division 10
28 (commencing with Section 11000) of the Health and Safety Code.

1 " . . . "

2 8. Section 3752 of the Code states:

3 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
4 made to a charge of any offense which substantially relates to the qualifications,
5 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
6 the meaning of this article. The board shall order the license suspended or revoked, or
7 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
8 conviction has been affirmed on appeal or when an order granting probation is made
9 suspending the imposition of sentence, irrespective of a subsequent order under Section
10 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
11 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
12 accusation, information, or indictment."

13 COST RECOVERY

14 9. Section 3753.5, subdivision (a) of the Code states:

15 "In any order issued in resolution of a disciplinary proceeding before the board,
16 the board or the administrative law judge may direct any practitioner or applicant found to
17 have committed a violation or violations of law to pay to the board a sum not to exceed
18 the costs of the investigation and prosecution of the case."

19 10. Section 3753.7 of the Code states:

20 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
21 include attorney general or other prosecuting attorney fees, expert witness fees, and other
22 administrative, filing, and service fees."

23 11. Section 3753.1, subdivision (a) of the Code states:

24 "An administrative disciplinary decision imposing terms of probation may
25 include, among other things, a requirement that the licensee-probationer pay the monetary
26 costs associated with monitoring the probation."

27 //

28 //

1 CONTROLLED SUBSTANCE

2 12. Cannabis is a Schedule I controlled substance pursuant to Health and
3 Safety Code Section 11054.

4 FIRST CAUSE FOR DISCIPLINE

5 (Conviction of a Crime)

6 13. Respondent is subject to disciplinary action under sections 3750,
7 subdivision (d), and 3752 of the Code, in that he was convicted of a crime substantially related to
8 the qualifications, functions or duties of a respiratory care practitioner. The circumstances are as
9 follows:

10 A. On or about August 2, 2002, Respondent's ex-wife contacted the Palmdale
11 Sheriff's Station because Respondent had refused to vacate her property, and she believed
12 he was growing marijuana there. The deputies accompanied her to her home, and upon
13 opening the front door, smelled the strong odor of marijuana. The deputies found
14 numerous marijuana plants along with cultivation equipment in the bedroom and
15 bathroom of the home. Respondent was arrested.

16 B. On or about August 6, 2002, in Los Angeles County Superior Court
17 Complaint No. MA024971, Respondent was charged with cultivating marijuana, in
18 violation of Health and Safety Code section 11358, a felony (Count 1), and possession of
19 marijuana for sale, in violation of Health and Safety Code section 11359, a felony
20 (Count 2).

21 C. On or about October 28, 2002, the court ordered the complaint amended to
22 add the charge of possession of concentrated cannabis, in violation of Health and Safety
23 Code section 11357, subdivision (a), a felony (Count 3).

24 D. On or about November 6, 2002, Respondent was convicted upon his plea of
25 nolo contendere to possession of concentrated cannabis (Count 3). Respondent was placed
26 on probation for three years on a number of terms and conditions, including serve 7 days
27 in county jail (with credit for 7 days), complete a substance abuse treatment program, pay
28 restitution fines of \$400.00 (stayed), pay fees and assessments of \$335.00, register as a

1 narcotics offender, not to use or possess any narcotics, dangerous drugs or associated
2 paraphernalia, and to submit to periodic anti-narcotic/alcohol tests. Counts 1 and 2 of the
3 complaint were dismissed.

4 SECOND CAUSE FOR DISCIPLINE

5 (Possession of a Controlled Substance)

6 14. Respondent is subject to disciplinary action under section 3750.5,
7 subdivision (a), of the Code in that he possessed the controlled substance concentrated cannabis.
8 The facts and circumstances set forth in Paragraph 13 of this Accusation are incorporated herein
9 by reference.

10 THIRD CAUSE FOR DISCIPLINE

11 (Commission of a Fraudulent, Dishonest, or Corrupt Act)

12 15. Respondent is subject to disciplinary action under Code section 3750,
13 subdivision (j), in that he committed a fraudulent, dishonest or corrupt act substantially related to
14 the qualifications, functions, or duties of a respiratory care practitioner. The circumstances are as
15 follows:

16 A. On Respondent's respiratory care practitioner license renewal application,
17 he answered "No" to the question regarding whether since he last renewed his license, he
18 had been convicted of, diverted for, or pled guilty or nolo contendere/no contest to any
19 violation of any law. On or about May 29, 2003, Respondent signed the license renewal
20 application under penalty of perjury declaring that the information on the application was
21 true and correct. He thereafter submitted the license renewal application to the Board. As
22 Respondent was well aware at the time he signed this license renewal application, his
23 answer was false by virtue of his conviction as set forth in Paragraph 13 above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 13298 issued to David V. Fainblit;
2. Ordering David V. Fainblit to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: March 5, 2008

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant